Case 4:02-cr-01640-CKJ-CRP Document :	101 Filed 04/16/08 Page 1 of 3
	TES DISTRICT COURT
FOR THE DISTR	RICT OF ARIZONA
UNITED STATES OF AMERICA,)
Plaintiff,) No. CR 02-1640-CKJ-CRP
vs.	REPORT AND
	RECOMMENDATION
JOSE PILAR NORIEGA-ENCINAS,	
Defendant.	
_	ipervised release. An evidentiary hearing was
	urt recommends that the District Judge find
Defendant to have violated his supervised re	elease conditions.
<u>Consent</u>	
	d the consent of the parties, a magistrate judge
	erning a petition to revoke supervised release.
	332 (9th Cir.1996), dicta (consent of defendant
	ued in context of the statute as a whole including
18 U.S.C. § 3401(b)). A review of the trans	script of the hearing indicates that consent was

not discussed with Defendant and no written consent appears in the docket in this case. Regardless, both parties proceeded with the hearing as if consent had been given. Consent can be inferred by the parties voluntarily proceeding before a magistrate judge. *Roell v. Withrow*, 538 U.S. 580, 586-587, 123 S.Ct. 1696, 1701-1702 (2003); *Chambless v. Louisiana-Pacific Corporation*, 481 F.3d 1345, 1350-1351 (11th Cir.2007). The Court determines by the actions of the parties that they consent to jurisdiction of the Magistrate Judge.

Statement of Facts

The Petition alleges that Defendant began to serve a two year term of supervised release when he was released from prison on August 20, 2005. Allegation A alleged a violation of standard condition number one, that Defendant violated federal law by illegally reentering the country after deportation.

United States Probation Officer Bea Castillo testified for the Government. Her testimony established that Defendant was ordered removed on September 30, 2005, and pursuant to that order was removed on October 4, 2005 through San Ysidro, California. He was subsequently found back in Phoenix, Arizona on October 24, 2006, while still on supervised release, when police responded to a domestic disturbance call.

Petitioner was not advised of his supervised release conditions in writing. Reporter's Transcript, 3/25/2008, p. 18. However, Judge Edginton specifically put Defendant on notice that he was not to reenter the United States without legal authorization. Reporter's Transcript, 11/19/2004, p. 7. The requirement that he not violate federal law is imputed to Defendant. *United States v. Ortuno-Higareda*, 450 F.3d 406, 411-412 (9th Cir.2006).

Recommendation

Wherefore, the Court finds as follows:

- 1. By the actions of the parties, the Magistrate Judge infers the parties consented to jurisdiction of the Magistrate Judge.
- 2. Defendant violated his conditions of supervised release by reentering the United States after being deported on October 4, 2005, thus violating federal law.

3. Allegation A is sustained.

The Court recommends that the District Judge adopt the finding that Defendant violated Standard Condition Number One and enter a disposition as appropriate.

Pursuant to 28 U.S.C. § 636(b), any party may serve and file written objections within ten days of being served with a copy of the Report and Recommendation. If objections are not timely filed, they may be deemed waived. The parties are advised that any objections filed are to be identified with the following case number: **cr-02-1640-CKJ**.

The Clerk is directed to mail a copy of the Report and Recommendation to Plaintiff and counsel for Defendant.

A disposition hearing is set for TUESDAY, MAY 27, 2008 AT 9:30 A.M. before the Honorable Cindy K. Jorgenson.

DATED this 16th day of April, 2008.

Charles R. PYLE

UNITED STATES MAGISTRATE JUDGE